

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 24 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : YES

FARUQ ADAMBHAI DAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 24 of 2002
MR YOGESH S LAKHANI for Petitioners No. 1-2
MR RC KODEKAR APP for Respondent No. 1
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CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 19/03/2002

ORAL JUDGEMENT

#. The petitioners-accused have challenged in this revision petition the impugned judgment and order passed by the learned Additional Sessions Judge, Morbi on

11.1.2002 in Criminal Misc. Application No.139 of 2001 filed by the respondent-State of Gujarat for cancelling the bail granted in their favour whereby the learned Judge cancelled that bail granted earlier.

#. On 22.7.2001 one Sanjay @Laloo Natubhai, door keeper of Vijay Cinema, Morbi lodged FIR No.1174 of 2001 before Morbi City Police Station for the offences punishable under Sections 436, 153A IPC against 2-3 persons. It was alleged in the complaint that after the movie 'Gadar' was over, some persons caused damage to the screen of the theater by throwing plastic kerosene bags and tried to set the screen at blaze. The fire was extinguished by the staff of the theater. In all, seven persons including the present two petitioners-accused were arrested for the offences punishable under Sections 143, 147, 148, 136, 153A and 120B IPC by the police 24.7.2001 i.e. within two days of the incident. All the seven accused persons filed joint bail application being Criminal Misc. Application No.131 of 2001 before the Court of Additional Sessions Judge, Morbi.

#. Shri M.V.Rathod, learned Addl. Sessions Judge, Morbi by his judgment and order dated 30.7.2001 allowed the bail application of the accused persons with certain conditions. I would not like to go in details of the reasoning assigned by the learned Judge for releasing all seven accused persons on bail. But it seems that the learned Judge was more impressed by the fact that if the accused are kept in jail for a longer period, then their family members may starve and as such there was no antecedents of accused, except accused Faruq Adam (present petitioner No.1) and Imran Adam against whom some offences were registered and the cases were pending. According to him the accused after released on bail they will not indulge in such criminal activities. The learned judge also considered the fact that after the earthquake of 26.1.2001, courts of Morbi have been shifted to Lalbag for a temporary period where there are no infrastructure, facilities and number of old cases are pending before the said court and, therefore, it would take years together for the final decision of that case.

#. While allowing the bail application of the accused persons, the learned Judge put up six conditions and one of the conditions was that the applicants shall not commit breach of peace and they shall maintain law and order. This conditional bail order was passed by the learned Judge on 30.7.2001. Thereafter, within a period of less than a week i.e. on 4.8.2001 FIR No.183 of 2001 came to be registered with Morbi City Police Station

against the accused No.2 for the offences under Sections 143, 147, 148, 149, 323, 504 IPC and under Sections 37(1), 135 of Bombay Police Act for which he was arrested and subsequently enlarged on bail.

Against the accused-petitioner No.1 Police Sub-Inspector of Morbi City Police Station lodged the complaint dated 6.8.2001 for selling illicit liquor with one accused-Majidkhan Mohamadkhan Pathan for which he (the accused No.1) was arrested and subsequently enlarged on bail.

#. In view of the above FIRs. filed against both the petitioners-accused, on behalf of State of Gujarat, the learned Addl. Public Prosecutor, Morbi submitted Criminal Misc. Application No.139 of 2001 on 17.8.2001 before the court of Additional Sessions Judge, Morbi praying for cancellation of the bail granted in favour of the present petitioners-accused on the ground of committing breach of condition No.3 of the bail order passed by the learned Additional sessions Judge, Morbi dated 30.7.2001 in joint Criminal Misc. Application No.131 of 2001 filed by the present petitioners-accused along with others. The said application was admitted on 17.8.200 and notice was ordered to be issued to the present petitioners-accused making it returnable on 20.8.2001. But, it seems that due to some or the other reasons the said application for cancellation of bail could not be decided early and it came to be finally decided only on 11.1.2002 by Shri P.P.Chaudhary, Additional Sessions Judge, Morbi. He allowed the application for cancellation of bail filed by the State of Gujarat and cancelled the bail of the present petitioners-accused on the ground that both the accused committed breach of condition No.3 of the conditional bail order dated 30.7.2001, therefore, bail granted in their favour must be cancelled. This impugned order of cancellation of bail has been challenged by the present petitioners-accused by way of this revision petition.

#. Learned counsel Shri Lakhani for the petitioners-accused vehemently submitted that the learned Judge was wrong in cancelling the bail of the petitioner-accused No.1 on the ground that while carrying out raid at the place of petitioner-accused No.1 bottles of illicit foreign liquor were found. He submitted that as per the FIR registered against him the present petitioner-accused No.1 was present at the place of co-accused Majidkhan Mohamadkhan Pathan. Complaint dated 6.8.2001 is produced at Annexure-C page 16 of this petition and it is clear from the said complaint that the

petitioners-accused were found to be present at the place of co-accused Majidkhan Mohamadkhan Pathan. Thus, factually, the learned Judge was wrong in observing that when the raid was carried out at the place of petitioner-accused No.1, bottles of english liquor were found. It is true that the bottles were not recovered from the place of accused No.1, but the fact remained that he was involved in offence of selling illicit liquor. It may be that he may not be selling the liquor at his own place but as per the complaint dated 6.8.2001 at page 16 he was found selling liquor along with co-accused Majidkhan Mohamadkhan Pathan at his place. Thus, it cannot be said that after being released on bail, he had not committed breach of condition No.3.

#. Mr.Lakhani was not in a position to submit that the petitioner-accused No.2 had not committed any offence. In fact, he conceded that both the petitioners-accused did commit breach of condition No.3 of the conditional order dated 30.7.2001, but he submitted that the petitioners-accused were enlarged on bail on 30.7.2001 by the trial court and, thereafter, except these two FIRs lodged on 3rd and 6th August, 2001 respectively no such offence is registered against them till the date, and by now a period of more than seven and half months has passed, therefore, it would not be in the interest of justice to cancel their bail and to send them in jail by upholding the order passed by the learned Judge, because the impugned order of cancellation of bail dated 11.1.2002 has been stayed by this court (Coram : R.P.Dholakia, J.) on 17.1.2002 and thereby they have remained on bail and if they are send to jail, then they will have to remain in jail for a long period.

#. However, learned APP Shri Kodekar for the respondent-State submitted that considering all the relevant facts and circumstances of the case initially joint bail application for all seven accused, including the present petitioners-accused, was allowed and all the accused were granted conditional bail by the then learned Additional Sessions Judge and if the accused commit breach of any of the conditions, then there was no option for the learned Additional Sessions Judge but to cancel their bail, which he did. He submitted that it is an undisputed fact that both of them have committed breach of condition No.3 by indulging themselves in committing offences under the Prohibition Act and IPC, therefore this court should not interfere with such order of cancelling bail passed by the learned Additional Sessions Judge in revision as revisional powers of this court are very limited.

#. Having carefully considered the rival submissions made by the learned counsel for the parties, I am of the considered opinion that if the accused have committed breach of any condition imposed by the court while releasing them on bail, then their bail must be cancelled. And, if the court had exercised its discretion and cancelled the bail after being fully satisfied that the petitioners-accused have committed breach of condition No.3 of the bail order dated 30.7.2001, then certainly this court cannot interfere with such discretionary order in revision. It is true that during this period of seven months they may not have committed any other offence but that would not be a ground to interfere with such orders in revisional jurisdiction, the scope of which is very narrow and limited. This court can exercise its revisional powers only if the trial court has committed jurisdictional error or the grave prejudice is caused, which is not the case here.

##. While granting bail the court has to take into consideration several factors viz. nature of offence, antecedents of offenders, their possibility of indulging themselves in similar type of activities maintaining peace, law and order etc., and strict conditions are imposed so that the accused person should be on his guards that if he commits breach of any of the conditions, then his bail may be cancelled. And, in spite of imposing conditions, if any accused commits breach of the condition imposed while releasing him on bail and if it is found by the court that he has committed such breach, then in my considered opinion the court has to cancel the bail of such accused, which exactly is done in this case by the learned trial judge in this case. Hence no interference is called for in this case as neither the trial judge has committed any jurisdictional error nor any grave prejudice is caused to the accused.

##. In view of the above discussion, I do not find any substance on merits in this revision petition. Accordingly, it fails and is dismissed. Interim relief granted earlier stands vacated. Now, the petitioner accused shall surrender forthwith.

##. At this stage, a request is made by learned counsel Shri Lakhani to grant two weeks time to the accused to surrender, to which Mr.Kodekar, learned APP has no objection. Hence, time is granted up to 2.4.2002 to the petitioners-accused to surrender.

(B.J.Shethna, J.)

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